

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EKKLESIA CONSTRUCTION CORP.

and

Case 3--CA--14955

LOCAL LODGE NO. 5, INTERNATIONAL  
BROTHERHOOD OF BOILERMAKERS,  
IRON SHIPBUILDERS, BLACKSMITHS,  
FORGERS AND HELPERS

SUPPLEMENTAL DECISION AND ORDER

*By Chairman Stephens and Members Cracraft and Oviatt*  
On September 29, 1989, the National Labor Relations Board issued a

Decision and Order in this proceeding.<sup>1</sup> The Order directed the Respondent, Ekklesia Construction Corp., inter alia, to make whole its employees and certain specified funds for any losses suffered as a result of the Respondent's failure to adhere to the provisions of its collective-bargaining agreement. On April 19, 1990, the United States Court of Appeals for the Second Circuit entered its judgment enforcing in full the Board's Order.<sup>2</sup>

A controversy having arisen over the amounts of money owed under the terms of the Board's Order as enforced, the Regional Director for Region 3 on July 31, 1990, issued a compliance specification and notice of hearing. The compliance specification sets forth the Respondent's liability for fringe benefit contributions and dues commencing November 2, 1988, with interest until paid. Exhibit 2 to the compliance specification computes the interest

<sup>1</sup> 296 NLRB No. 130.

<sup>2</sup> No. 90-4041 (unpublished).

accrued on delinquent payments as of June 1, 1990. The compliance specification also sets forth the Respondent's liability for attorney fees as provided for in the collective-bargaining agreement. Although copies of the compliance specification and notice of hearing were duly served on the Respondent by certified mail, the Respondent has failed to file an answer.<sup>3</sup>

By letter dated September 21, 1990, sent by certified and by regular mail, the Regional Office notified the Respondent that no answer had been received to the compliance specification and notice of hearing and that unless an answer was received by September 27, 1990, a Motion for Summary Judgment would be filed.<sup>4</sup>

By letter of October 11, 1990, sent by certified and by regular mail, the Regional Office notified the Respondent that Region 3 had not received an answer and that unless an answer was received by October 19, 1990, a Motion for Summary Judgment would be filed.<sup>5</sup> A copy of the compliance specification was enclosed with the October 11 letter. The Respondent failed to file an answer.

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<sup>3</sup> The compliance specification and notice of hearing was returned by the postal service as unclaimed notwithstanding that the document had been forwarded by the postal service to the Respondent's new address. The return envelope indicated that multiple notices to claim the document were ignored. The Respondent's refusal or failure to claim certified mail does not defeat the purposes of the Act. Oceana No. 1, Inc., 295 NLRB No. 10 fns. 1 & 2 (June 15, 1989); Aslin Management Co., 291 NLRB No. 33 (Sept. 30, 1988); Michigan Expediting Service, 282 NLRB 210 fn. 6 (1986).

<sup>4</sup> The certified letter was returned as unclaimed, notwithstanding that the letter had been forwarded to the Respondent's current address. The return envelope indicated that multiple notices to claim the document were ignored. The letter sent by regular mail was not returned to Region 3.

<sup>5</sup> The certified letter was returned as unclaimed, notwithstanding that the letter had been addressed to the Respondent's current address and that the return envelope indicates that multiple notices to claim the document were ignored. The letter sent by regular mail was not returned to Region 3.

On November 23, 1990, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On November 28, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has failed to file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

Section 102.56 of the National Labor Relations Board's Rules and Regulations, in pertinent part, states:

(a) Filing and service of answer; form.---Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. . . .

. . . .  
(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.---If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. We therefore deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.

## ORDER

The National Labor Relations Board orders that the Respondent, Ekklesia Construction Corp., formerly of Poughkeepsie, New York, and currently located in North Hollis, New York, its officers, agents, successors, and assigns, shall make whole the Union and the fringe benefit funds by paying the amounts listed below plus any additional amount as prescribed in Merryweather Optical Co.<sup>6</sup>

Fringe Benefit Contributions:

Local No. 5 Welfare Fund	\$1,485.52
Local No. 5 Pension Fund	557.07
Local No. 5 Annuity Fund	3,528.11
Local No. 5 Vacation Fund	1,299.83
International Pension Fund	2,042.59
Northeast Area Apprenticeship Fund	68.50

Dues deductions	\$ 575.64
Delinquent payment penalty (as of 6/1/90)	\$1,094.00

Attorney fees	\$3,593.45
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Dated, Washington, D.C.      January 25, 1991

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James M. Stephens,      Chairman

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Mary Miller Cracraft,      Member

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Clifford R. Oviatt, Jr.,      Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

<sup>6</sup> 240 NLRB 1213 (1979).